

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

| | | |
|------------------------------|---|--------------------------|
| NETLIST, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. 2:22-cv-293-JRG |
| vs. |) | |
| |) | JURY TRIAL DEMANDED |
| SAMSUNG ELECTRONICS CO, LTD; |) | (Lead Case) |
| SAMSUNG ELECTRONICS AMERICA, |) | |
| INC.; SAMSUNG SEMICONDUCTOR |) | |
| INC., |) | |
| |) | |
| Defendants. |) | |

| | | |
|--------------------------|---|--------------------------|
| NETLIST, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. 2:22-cv-294-JRG |
| vs. |) | |
| |) | JURY TRIAL DEMANDED |
| MICRON TECHNOLOGY, INC.; |) | |
| MICRON SEMICONDUCTOR |) | |
| PRODUCTS, INC.; MICRON |) | |
| TECHNOLOGY TEXAS LLC, |) | |
| |) | |
| Defendants. |) | |

**PLAINTIFF NETLIST, INC.'S OPPOSITION TO
SAMSUNG'S MOTION TO STAY (Dkt. 88)**

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I. INTRODUCTION

The PTAB has instituted an IPR on only one claim of the 116 claims asserted in this Action,¹ and two of the three IPR petitions underlying Samsung's Motion to Stay have yet to reach an institution decision. The fact that no institution decision has been reached for two of the patents in this case (and one additional patent pending motion for leave to amend) alone warrants denial of Samsung's motion: "[t]he 'universal practice' in this District, as well as the practice of most district courts, is to deny a motion for stay when the Board has not yet acted on a petition for IPR." *Scorpcast, LLC v. Boutique Media Pty Ltd.*, 2020 WL 7631162, at *3 (E.D. Tex. Dec. 22, 2020). Samsung does not identify a single case where a court in this District stayed litigation prior to institution decisions for the patents-in-suit, nor does Samsung explain why this case should be handled differently.

Moreover, as explained below, Samsung's IPRs, even if instituted, will not "result in simplification of the issues," which is "the most important factor when evaluating a motion to stay." *Id.* Samsung's primary argument in support of its motion is that "the parties will save significant costs, time, and resources . . . [e]ven if only some claims or patents are invalidated." Dkt. 88, at 5. However, "only when the PTAB decides whether, and to what extent, to institute review will there be meaningful potential for simplification." *Perdiemco LLC v. Telular Corp.*, 2017 WL 2444736, *2-*3 (E.D. Tex. June 6, 2017). Regardless, any simplification is nullified by the invalidity combinations Samsung intends to present in this case; Samsung's invalidity contentions reflect an intent to rehash its printed publication invalidity theories as prior art used in combination with system art. In addition, Samsung's IPRs will have no impact on Samsung's other affirmative defenses in the case, such as non-

¹ Netlist asserts 64 claims of the U.S. Pat No. 7,619,912 (the "912 patent"), 15 claims of U.S. Pat No. 11,093,417 (the "417 patent"), 29 claims of U.S. Pat No. 9,858,215 (the "215 patent"). On January 20, Netlist moved to amend its complaint to assert an additional patent, U.S. Patent No. 10,268,608 (the "608 patent"). Dkt. 62. On February 7, Netlist served its infringement contentions to assert 8 claims of the '608 patent. Netlist's motion to amend has been fully briefed and is pending before this Court. *Id.*

infringement, invalidity under Section 112, prosecution laches, estoppel and so on.

The only certainty from a stay of this case is the prejudice Netlist would suffer from an indefinite delay in enforcing its patent rights. The Court should deny the motion so as “to secure the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1.

II. FACTUAL BACKGROUND

Netlist filed the instant action against Samsung for infringement of the '912, '417, and '215 patents on August 1, 2022. Dkt. 1. A parallel proceeding involving the same patents was filed against Micron on the same day. The Court consolidated the two cases on October 21, 2022. Dkt. 39. On January 20, 2023, Netlist moved to amend its complaint to assert the '608 patent. Dkt. 62. A jury trial is scheduled in this case for April 15, 2024.

Netlist has diligently prosecuted this Action over the past 11 months. On November 17, 2022, Netlist served 956 pages of infringement contentions on Samsung and Micron defendants asserting: 64 claims of the '912 patent against Samsung's and Micron's DDR3 and DDR4 memory products; 15 claims of the '417 patent and 29 claims of the '215 patent against DDR4 products. Ex. 1 (Cover of Netlist's Infringement Contentions). Likewise, Samsung's served over 10,500 pages of invalidity contentions on April 13, 2023. With the substantial completion of document production approaching, Netlist has already produced 12,000 documents comprising over 300,000 pages, the substantial bulk of documents Netlist will likely produce in this case. Samsung has produced 39,795 documents spanning over 368,000 pages. Netlist has also pushed forward with third party discovery, serving document and deposition subpoenas on 10 of Samsung's suppliers and customers to obtain information about the design and operation of various components of Samsung's accused products.

Samsung filed an IPR petition as to the '912 patent on February 17, 2022. *See* IPR2022-615 ('912 patent), paper 1. This proceeding has been stayed since January 5, 2023 pending the Director's *sua sponte* review of the institution decision. IPR2022-615, paper 38 at 2. Samsung filed IPR petitions

for the '417 and '215 patents on January 10, 2023. IPR2023-00454 ('417 patent), paper 1; IPR2023-00455 ('215 patent), paper 1. The institution decisions are due August 9, 2023, and the FWDs (if instituted) would not be due until August 9, 2023. 35 U.S.C. § 314(b); 35 U.S.C. § 316(a)(11).

On April 27, 2023, Samsung filed an IPR petition as to the '608 patent, and the institution decision is not due until December 14, 2023. IPR2023-00847 ('608 patent). If instituted, the FWD would not issue until December 14, 2024. The '608 has already survived one IPR Petition. Defendant Micron brought an IPR petition against the '608 patent on December 23, 2021. The Board denied institution of the IPR on July 19, 2022, as Micron failed to “demonstrate a reasonable likelihood of prevailing on any of the challenged claims of the '608.” IPR2022-00237 ('608 patent), paper 15 at 21.

III. LEGAL STANDARD

“District courts typically consider three factors when determining whether to grant a stay pending inter partes review of patents-in-suit: (1) whether the stay will unduly prejudice the nonmoving party, (2) whether the proceedings before the court have reached an advanced stage, including whether discovery is complete and a trial date has been set, and (3) whether the stay will likely result in simplifying the case before the court.” *Fall Line Patents, LLC v. Am. Airlines Grp.*, 2018 WL 4169251, at *1 (E.D. Tex. May 21, 2018). “The party seeking a stay bears the burden of showing that such a course is appropriate.” *JumpSport, Inc. v. Acad., Ltd.*, 2018 WL 1806900, at *1 (E.D. Tex. Apr. 17, 2018).

IV. ARGUMENT

“[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.” *Nanoco Techs. Ltd. v. Samsung Elecs. Co.*, 2021 WL 3027335 (E.D. Tex. Jan. 8, 2021). No institution decision has been rendered as to the '215, '417, or '608 patents. It is this Court’s common practice to wait to decide whether a proceeding should be stayed until after the USPTO has entered institution decisions as to **all patents** in suit. *See, e.g., Acorn Semi, LLC v.*

Samsung Elecs. Co., 2020 WL 10284981, at *2 (E.D. Tex. Sept. 14, 2020) (denying motion to stay); *Barkan Wireless IP Holdings, L.P. v. Samsung Elecs. Co.*, 2019 WL 8647996, at *2 (E.D. Tex. Mar. 15, 2019) (same). Samsung’s motion does not raise any cases or arguments explaining why this Court should deviate from its universal practice in this Action. In addition, each factor courts in this District consider when deciding a motion to stay weighs against a stay.

A. Netlist Will Be Unduly Prejudiced by a Stay of This Instant Action

Netlist has a “right to timely enforcement of its patent rights.” *Saint Lawrence Commc’ns LLC v. ZTE Corp.*, 2017 WL 3396399, at *2 (E.D. Tex. Jan. 17, 2017); *Trover Grp., Inc. v. Dedicated Micros USA*, 2015 WL 1069179, at *2 (E.D. Tex. Mar. 11, 2015) (noting “the general right of patent owners to timely enforcement of their patent rights.”); *Realtime Data LLC v. Actian Corporation*, 2016 WL 3277259, at *2 (E.D. Tex. June 14, 2016) (same).

Samsung seeks to stay this case until “a ***final decision*** in the IPRs currently pending at the PTAB with respect to each of the asserted patents.” Dkt. 88, at 7 (emphasis added). Assuming institution of the pending petitions, the PTAB would not provide its FWDs as to all the ’912, ’417, and ’215 patents until August 2024 (or December 2024 if Netlist’s motion for leave to add the ’608 patent is granted)—several months after the trial scheduled to start on April 15, 2024. Disrupting the Court’s trial schedule with a stay would “impair that right, potentially requiring a new trial date amidst the Court’s already busy calendar.” *Intell. Ventures II LLC v. FedEx Corp.*, 2017 WL 6559172, at *4 (E.D. Tex. Dec. 22, 2017).

Further, Samsung vaguely seeks a stay until “a final decision in the IPRs,” which may also implicate any Federal Circuit appeals from the IPR proceedings. In 2022, the median time to disposition for Federal Circuit appeals from the USPTO was 15 months.² If this case is further stayed

² Available at <https://cafc.uscourts.gov/home/the-court/reports-statistics/>.

pending such appeals, this case would not likely resume until November 2025—over a year and a half after the currently scheduled trial date. Staying this Action for an unknown duration would undermine the “public interest in the ‘speedy resolution of disputes.’” *Team Worldwide Corp. v. Wal-Mart Stores, Inc.*, 2018 WL 2722051, at *4 (E.D. Tex. June 6, 2018) (citation omitted); *Invensys Sys., Inc. v. Emerson Elec. Co.*, 2014 WL 4477393, at *3 (E.D. Tex. July 25, 2014) (“Firm trial settings resolve cases and reduce litigation costs.”).

Samsung’s suggestion that Netlist only seeks monetary damages and thus would not be prejudiced is incorrect. Dkt. 88 at 5. *First*, Netlist’s complaint seeks not only monetary damages, but also all equitable relief the Court deems proper, including injunctive relief. Dkt. 12, at 47. Because Netlist’s ’215 and ’417 patents-in-suit expire in 2025, Samsung’s requested stay would dramatically limit any injunctive relief Netlist can seek. Ex. 2 (estimation of expiration dates of ’215 and ’417 patents based on USPTO calculator). *Second*, due to rollout of next generation DDR5 DIMMs, the accused DDR3 R/LRDIMM and DDR4 R/LRDIMM products are near the end of their life and may be obsolete by the time Samsung’s requested stay is lifted in August 2024.³ Thus, granting a stay would permit Samsung to continue infringement by exploiting the remaining life of the accused products before the industry moves to next generation DDR5 DIMMs. *Third*, in light of its product supply agreement with SK Hynix, Netlist offers for sale memory products that directly compete with Samsung’s accused products in this Action.⁴ Samsung’s ability to compete unlawfully by selling infringing products decreases demand for Netlist’s products. *See Celsis in Vitro, Inc. v. CellzDirect, Inc.*,

³ See, e.g., <https://www.digitaltrends.com/computing/the-end-of-ddr4-ram/>; <https://www.digitimes.com/news/a20220330PD213.html> (“Samsung Electronics has notified customers that the company will take DDR3 chip orders until the end of 2022 and fulfill the orders for deliveries until the end of 2023, according to industry sources.”).

⁴ <https://netlist.com/products/memory-module/ddr4-dimms/> (Netlist website listing DDR4 RDIMM products); <https://netlist.com/products/memory-module/ddr3-dimms/> (Netlist website listing DDR3 RDIMM products).

664 F.3d 922, 930 (Fed. Cir. 2012) (“Price erosion, loss of goodwill, damage to reputation, and loss of business opportunities are all valid grounds for finding irreparable harm.”). *Fourth*, even if Samsung were correct that Netlist sought only monetary damages, that would not support a stay at this stage of the case. *See, e.g., Chrimar Sys., Inc. v. Adtran, Inc.*, 2016 WL 11746525, at *1 (E.D. Tex. Dec. 28, 2016) (“Defendants’ argument suggests that only those parties who seek injunctions could ever experience undue prejudice from the delay of the final resolution of their case. This cannot be the case.”).

Samsung’s conclusory assertion that “a stay will benefit Samsung, Netlist, and Micron by allowing them to benefit from the IPR system that Congress intended to aid courts . . . ,” Dkt. 88 at 6, is not a sufficient basis to support its motion to stay. *See JumpSport*, 2018 WL 1806900, at *1 (“[T]here is no per se rule that patent cases should be stayed pending [IPR] proceedings, because such a rule would invite parties to unilaterally derail litigation.”) (internal citations omitted). If Samsung were right, every case should be stayed once an IPR were filed. This factor weighs against a stay.

B. A Stay Would Not Simplify Issues in This Case

Samsung’s IPRs will not simplify issues in this case for several reasons. Samsung admits that “the most significant factor bearing on whether to grant a stay... is the prospect that the *inter partes* review proceeding will result in simplification of the issues before the Court,” Dkt. 88 at 4, but ignores the fact that at this stage any potential simplification is speculative at best, because no institution decision has been rendered for the ’417, ’215, or ’608 patents. “[I]f the PTAB denies the institution of *inter partes* review, there will be no simplification of the issues before this Court.” *AR Design Innovations LLC v. Ashley Furniture Indus., Inc.*, 2021 WL 6496714, at *3 (E.D. Tex. Jan. 11, 2021). Samsung’s own cited authority is in accord. *See NFC Tech. LLC v. HTC Am., Inc.*, 2015 WL 1069111, at *4 (E.D. Tex. Mar. 11, 2015) (finding “likelihood [of simplification] is ***far more speculative*** before the PTAB decides whether to institute [an IPR]”) (emphasis added).

Moreover, Samsung’s invalidity contentions in this Action raised a much broader scope of

invalidity challenges than the IPR petitions, and any issue simplification is negated by Samsung's alleged system art combinations. As an example, Samsung's IPR petition against the '417 patent raised 3 grounds based on 4 prior art references (Perego, JESD79-2, Ellsberry, and Halbert). IPR2023-454, paper 1. Samsung's invalidity contentions identified at least **73** "Prior Art Patents and Printed Publications" as bases to challenge the validity of the '417 patent. Ex. 3 (2023-04-13 Invalidity Contentions) at 17-21. Samsung intends to take the view that it can present each of these references to the jury in this case regardless of the outcome of the IPR, because it has combined every asserted reference with at least one piece of system art. *See, e.g., Id.*, at 151-152 (combining U.S. Patent No. 7,103,742 ("Mailloux") with, *inter alia*, Kentron's Quad Band Memory System ("QBM")); at 152-154 (combining U.S. Patent Application Publication No. 2006/0117152 ("Amidi") with, *inter alia*, Kentron's Quad Band Memory System ("QBM")); at 154-178 (combining all other references with alleged system art). Samsung's claim charts also take the very expansive view that Samsung has reserved the right to combine any charted reference with any other "references in Appendix C as charted for this claim limitation." *See, e.g., Ex. 4* (Mailloux invalidity chart) at 8. Samsung's invalidity contentions as to the other patents have similarly combined every asserted reference with at least one piece of alleged system art. Ex. 3, at 63-77, 100-131. The following table summarizes the number of references that will still be at issue:

| Pat. | IPR | Invalidity Contentions |
|-------------|--------------|-------------------------------|
| '912 | 3 references | 25 references |
| '215 | 4 references | 76 references |
| '417 | 5 references | 76 references |

Thus, the possibility that the IPR proceedings will simplify issues presented before this Court is minimal, as Samsung will attempt to resurrect its prior art patent and printed publication invalidity arguments under the guise of its system art combinations. *See Unifi Sci. Batteries, LLC v. Sony Mobile Comm's AB*, 2014 WL 4494479, at *2 (E.D. Tex. Jan. 14, 2014) ("[T]he PTO merely granted the IPR

request with respect to two references in TI's petition and four references in Samsung's petition" but the "Defendants' joint invalidity contentions contained over 40 references").

Samsung has also raised additional invalidity arguments based on lack of written description/enablement, indefiniteness with respect to each of the patents-in-suit, prosecution laches, estoppel, license and covenant not to sue, exhaustion, and inequitable conduct. Ex. 3 (2023-04-13 Invalidity Contentions) at 189-220; *see also* Dkt. 61 (Samsung's First Amended Answer). None of these defenses will be resolved by the IPRs. Courts in this District have held that where a defendant's invalidity theories exceed the scope of a pending IPR (as Samsung has done here), such IPRs will have a "negligible impact on potentially streamlining the case." *Saint Lawrence Commc'ns LLC v. ZTE Corp.*, 2017 WL 3396399, at *2 (E.D. Tex. Jan. 17, 2017) (denying stay where only one of five asserted patents were instituted—amounting to six of 38 asserted claims—and the defendant's invalidity contentions exceeded the limited scope of the IPR).

And with respect to the '912 patent, Netlist has asserted 64 claims against Samsung in this Action, but Samsung has only sought IPR as to claim 16. IPR2022-00615, paper 1. As such, even if the PTAB invalidates claim 16 of the '912 patent, that does not resolve the vast majority of Netlist's infringement claims against Samsung's DDR3 RDIMMs and LRDIMMs pending before this Court. Ex. 1, at 3-5.⁵ *See, Parthenon Unified Memory Architecture LLC v. HTC Corp. & HTC Am., Inc.*, 2016 WL 3365855, at *4 (E.D. Tex. June 17, 2016) ("IPRs are not pending as to five asserted claims . . . These circumstances cut against a stay because no IPRs are pending against half of the asserted claims in this case.").

Samsung's argument that "[e]ven if only some claims or patents are invalidated, the IPR

⁵ Samsung does not contend—because it cannot—the pending summary judgment motion based on intervening rights defense as to the remaining 63 claims of the '912 patent is a sufficient basis to stay this case.

proceedings will inform this Court on issues of construction of claim terms,” Dkt. 88, at 5, is not well taken. Samsung fails to give a single example of any term that could be implicated. At any rate, this Court will reach a claim construction decision and hold a jury trial before any of the IPR FWDs are due.

Given that Samsung’s IPRs will not simplify any issues, this factor alone is sufficient to dispose of Samsung’s motion. *See Staton Techija, LLC v. Samsung Elecs. Co., Ltd.*, 2022 WL 4084421, *2 (E.D. Tex. Sept. 6, 2022) (“When the motion was initially filed, the suit was in its infancy and the PTAB had yet to institute IPR on any of the patents in either suit. If considered from that point in time, the stage of the proceedings factor would favor stay, but without knowing whether or which of the patents in either suit may be subject to IPR institution the issue simplification factor weighs against a stay. Considering the ***weight afforded the latter factor, a stay is not appropriate.*** If we consider these factors after Samsung notified the Court that ***IPR has been instituted against three of the fourteen patents in suit, the result is no different.***”) (emphasis added).⁶

C. The Stage of This Litigation Weighs Against Granting a Stay

The stage of this litigation also weighs against a stay. This case has been pending since August 1, 2022. Claim construction is well underway as the parties have begun work on the P.R. 4-3 joint claim construction statement, and the *Markman* hearing is scheduled for October 2023. Trial is scheduled for April 15, 2024, roughly nine months away. Dkt. 66. *See BarTex Research, LLC v. FedEx Corp.*, 2009 WL 1164567, *4 (E.D. Tex. 2009) (noting that the case was not in its infancy as the claim

⁶ The cases Samsung relies on in its motion are inapposite, as IPRs (or reexaminations) had been instituted in each of those cases. *See Norman IP Holdings, LLC v. TP-Link Techs., Co.*, 2014 WL 5035718, at *2 (E.D. Tex. Oct. 8, 2014) (“On September 23, 2014 PTAB granted Nissan’s petition for IPR as to the asserted claims in the ’689 and ’597 patents”); *CyWee Grp. Ltd. v. Samsung Elecs. Co.*, 2019 WL 11023976, at *1, *8 (E.D. Tex. Feb. 14, 2019) (petitions already instituted and petition for hearing denied); *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1309 (Fed. Cir. 2014) (motion to stay filed after the IPR instituted as to the patents-in-suit).

construction was set to occur in two months and trial in nine months). Even if the IPRs are instituted, the USPTO will not issue FWDs for all patents-in-suit until August 2024 (or December 2024 if Netlist's motion to amend to assert the '608 patent is granted), at least four months after the scheduled jury trial.

As discussed above, Netlist has already produced over 300,000 pages of documents, has expended substantial effort in developing its infringement theories for this case, and has served subpoenas on and engaged in meet and confers with 10 third parties. Given the amount of work that has already been undertaken in developing this case, this factor too weighs against a stay.

V. CONCLUSION

For the reasons stated above, Samsung's Motion to Stay, Dkt. 88, should be denied.

Dated: June 30, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 30, 2023, a copy of the foregoing was served to all counsel of record.

/s/ Yanan Zhao
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